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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/601,998

06/23/2003

Timothy J. Boyd

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27572 7590 12/03/2008
HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

EXAMINER

ACKUN, JACOB K

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

12/03/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/601,998	Applicant(s) BOYD, TIMOTHY J.	
	Examiner Jacob K. Ackun Jr.	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16, 18-28 and 30-39 is/are pending in the application.
- 4a) Of the above claim(s) 26 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16, 18-25, 27-28, 30-34 and 36-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 16, 18-25, 27-28, 30-34 and 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kladders et al., as applied in the last office action. Kladders discloses most of the elements of the claims, but may be missing elements such as “heat set” and “wide mouth”. On the other hand such containers appear to be conventional. Moreover, the closure and container combination of Kladders is not disclosed in the reference as having any elements that are incompatible with the “heat set” or “wide mouth” limitations, or with any other known elements that may be deemed to be missing from the reference. For example Kladders does not teach that the prior art closure/container combination disclosed is not “heat set” or “wide mouth”. Accordingly it would have been obvious in view of Kladders to provide the container/closure combination therein with the missing elements of the claims, for the purpose of improving the ability of the combination to be used with specific content.
3. Applicant's arguments filed 7/28/08 have been fully considered but they are not persuasive. Applicant points to column 1 lines 12-23 of Kladders as support for the argument that Kladders is directed to an invention that has nothing to do with the invention disclosed and claimed in the subject application. On the other hand,

the noted section of Kladders clearly describes background teachings that may be relevant to the Kladders disclosure, but that are not necessarily limiting with respect to the Kladders invention. Accordingly, the applicants sole use of this section of Kladders to characterize the relevant Kladders teaching is not convincing to this examiner. On the other hand it does appear that the claims continue to recite limitations that are well known in the art. See the descriptions of the prior art in applicants specification and the prior art cited in this case, for example, and compare these with claims 16 and 33, for example. Applicant appears to disclose that every element of these claims is known in the art. Additionally, Kladders also clearly teaches the sealing means, headspace displacing member and clearance, in a general container/closure combination. Accordingly an argument that the “heat set” or wide “mouth limitation” should distinguish over Kladders is simply not convincing.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened

statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacob K. Ackun Jr./
Primary Examiner, Art Unit 3728